

### **REMARKS**

In this Response claims 4 and 25 are cancelled, without prejudice; and claims 1, 5, 7, 26, and 29 are amended. These amendments are fully supported by the originally filed application. No new matter has been added.

Claims 1-3, 5-24, and 25-29 are presented for examination.

### **Double Patenting**

The Examiner rejects the claims on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 7,213,096 (hereinafter '096). The '096 and the instant application are commonly owned.

In response, the applicant hereby provides a terminal disclaimer, overcoming the rejection.

### **Specification**

The Examiner objects to the abstract for lacking proper content. The applicant amends the abstract accordingly, thereby obviating the objection.

The Examiner objects to the specification as it lacks a summary of invention, and requires appropriate correction. The applicant respectfully disagrees. Neither MPEP 608.01(d) nor 37 CFR 1.73 requires that the applicant include a Summary of the Invention. 37 CFR 1.73 states:

"A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, should precede the detailed description. Such a summary should, when set forth, be commensurate with the invention as claimed and any objects recited should be that of the invention as claimed" (emphasis added).

Thus, 37 CFR 1.73 simply details the requisite contents of the Summary when it is set forth. The Summary is not required, as 1.73 says that the Summary should precede the detailed description. Language commonly used in law and regulation to indicate a requirement, such as "must," is absent from 1.73. Further, if one interprets "should" as "must", the clause "when set forth" becomes a meaningless superfluity, as the Summary would always be set forth under such an interpretation. Additionally, in discussing claims, 37 CFR 1.75 states: "The specification *must* conclude with a claim ..." (emphasis added). Thus, 1.75 amply illustrates that language

such as “must”, not “should”, is used is setting forth the requirements for the content of the Specification. Because of the absolute lack of “must” language in 1.73, it follows that a Summary of the Invention is NOT required. Accordingly, the applicant has not amended the Specification to add such a Summary.

#### **Allowable subject matter**

The applicant thanks the Examiner for allowing claims 16-23, and indicating claims 4-8 and 25-29 as allowable, if re-written in independent form.

The applicant re-writes independent claims 1 and 24 to include features of now cancelled allowable claims 4 and 25, respectively. Accordingly, independent claims 1 and 24 are allowable, along with associated dependent claims 2-3, 5-15, and 26-29.

Thus, the application currently includes allowed subject matter only.

#### **Conclusion**

For these reasons, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (503) 796-2883. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge Deposit Account No. 500393.

Respectfully submitted,  
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